

1 RICK D. ROSKELLEY, ESQ., Bar # 3192
2 ROGER GRANDGENETT, ESQ., Bar #6323
3 KATIE BLAKELY, ESQ., Bar # 12701
LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway
Suite 300
4 Las Vegas, NV 89169-5937
Telephone: 702.862.8800
5 Fax No.: 702.862.8811

6 Attorneys for Defendant
BRIAD RESTAURANT GROUP, L.L.C.
7

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 ERIN HANKS, et al.,
11

12 Plaintiffs,

13 vs.

14 BRIAD RESTAURANT GROUP, LLC., a
New Jersey limited liability company; and
15 DOES 1 through 100, inclusive,

16 Defendant.

Case No. 2:14-cv-00786-GMN-PAL

17
18 DEFENDANT'S MOTION FOR LEAVE TO
FILE SUR-REPLY IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
LIMITATION OF ACTION

AND ORDER

19 Defendant, by and through its counsel of record, respectfully moves this Court for leave to
20 file the attached Sur-Reply in Support of Defendant's Opposition to Plaintiffs' Motion for Partial
Summary Judgment Regarding Limitation of Action.

21 **MEMORANDUM OF POINTS & AUTHORITIES**

22 **I. INTRODUCTION**

23 On July 3, 2014, Plaintiffs filed their Motion for Partial Summary Judgment Regarding
24 Limitation of Action (Dkt. # 16) asserting that there is no limitation period for minimum wage
25 claims in Nevada. On August 4, 2014, Defendant filed its Opposition (Dkt. # 29). An hour and a
26 half later, Plaintiffs filed their Reply (Dkt. # 30).

27 Plaintiffs' Reply, which only tangentially addresses Defendant's Opposition was blatantly
28 designed to raise several new issues and arguments that have not been previously addressed.

1 Specifically, Plaintiffs essentially abandon their original argument that there is no limitation period
 2 for minimum wage claims in Nevada. Instead Plaintiffs advance the argument that a four-year statute
 3 of limitations applies and that the continuing violations doctrine should apply as well. Neither of
 4 these arguments was raised by Plaintiffs' in their original Motion for Summary Judgment. As a
 5 result, Defendants seek the opportunity to respond to Plaintiffs' new arguments, and respectfully
 6 request that the Court grant its leave to file the attached Sur-Reply.

7 **II. ARGUMENT**

8 The Local Rules provide only for a memorandum in opposition and a reply brief. Local Rule
 9 7-2. However, courts have recognized that where new evidence or arguments are raised for the first
 10 time in a party's reply brief in support of its motion, the court should permit the non-moving party to
 11 respond to the new matters prior to the deposition of the motion. *See i.e. FNBN-RESCON I LLC v.*
 12 *Ritter*, 2014 WL 979930, at *6 (D. Nev. Mar. 12, 2014); *see also Kanwick v. City of Reno*, 2008 WL
 13 873085, at *1 fn. 1 (D. Nev. Mar. 27, 2008) aff'd sub nom. *Kanwick v. Reno City Police*, 339 F.
 14 App'x 745 (9th Cir. 2009) (finding a sur-reply may be filed by leave of court, and to address new
 15 matters raised in a reply to which a party would otherwise be unable to respond). For example, in
 16 *Ritter*, the court found that a sur-reply was appropriate when the plaintiff originally requested "all
 17 the relief requested in the Complaint," without limitation," but then in its reply "restricted the scope
 18 of its motion to a determination as to liability, not as to damages, and advanced several new
 19 arguments for why the Court could bifurcate its consideration." *Ritter*, 2014 WL 979930, at *6. The
 20 court further noted that it could either discard the plaintiff's arguments or provide defendants with
 21 the opportunity to respond. *Id.*

22 Here, Plaintiffs have raised new arguments in their Reply in Support of Motion for Partial
 23 Summary Judgment Regarding Limitation of Action. First, in the Reply, Plaintiffs modified their
 24 Motion for Summary Judgment by moving for a determination that NRS 11.220's four-year statute
 25 of limitations applies, something that was not raised by Plaintiffs in their Motion for Summary
 26 Judgment. Second, Plaintiffs asserted in the Reply for the first time that the continuing violation
 27 doctrine applies. Accordingly, Defendants should be allowed to file the attached Sur-Reply in order
 28 to respond to these new issues. ***See Proposed Sur-Reply attached hereto as Exhibit 1.***

1 Alternatively, Defendant requests that the Court disregard Plaintiffs' new arguments presented in
2 their Reply.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request that the Court grant this Motion
5 for Leave to File a Sur-Reply and accept the attached Sur-Reply memorandum for filing.

6 August 12, 2014
7

8 Respectfully submitted,
9

10 
11 RICK D. ROSKELLEY, ESQ.
12 ROGER L. GRANDGENETT, ESQ.
13 KATIE BLAKELY, ESQ.
14 LITTLER MENDELSON, P.C.

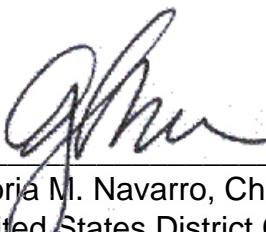
15
16 Attorneys for Defendant
17 BRIAD RESTAURANT GROUP, L.L.C.

18 **ORDER**

19 **THE COURT HAVING READ** the foregoing Motion for Leave to File Sur-Reply in
20 Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment
21 Regarding Limitation of Action (ECF No. 31), and Plaintiffs' having filed their Non-
22 Opposition to Defendant's Motion (ECF No. 32), and good cause appearing therefore,
23 hereby GRANTS Defendant's Motion (ECF No. 31). Accordingly,

24 Defendant's counsel shall file with the court Defendant's Sur-Reply in Support of
25 Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Regarding
26 Limitation of Action (ECF No. 31-1), attached to Defendant's Motion as Exhibit 1.

27 **DATED** this 13th day of August, 2014.
28


29 Gloria M. Navarro, Chief Judge
30 United States District Court